

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DR. ADDAGADA C. RAO,
Plaintiff,

DECLARATION OF
KENNETH SUTAK IN
OPPOSITION TO
DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT

-against-

Index No. : 14 Civ. 1936
(NGG) (SLT)

WYCKOFF HEIGHTS MEDICAL CENTER, INC.,
and RAMON RODRIGUEZ

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Kenneth Sutak, an attorney admitted to practice in the State of New York and the United States District Court for the Eastern District of New York, declares that he is Of Counsel to the law firm of Franklin, Gringer & Cohen, P.C., the attorneys for plaintiff Dr. Addagada C. Rao ("A. C. Rao") in the above-captioned matter, and submits this declaration in opposition to the defendants' joint motion for summary judgment, and also declares as follows:

1 Attached hereto as Exhibit 1 are true and correct copies of the affidavit of Dr. Ramon M. Cabanas dated April 19, 2016 ("Cabanas Affidavit dated 4/19/16"), with Franklin, Gringer & Cohen, P.C. letter dated May 20, 2016 to Susan L. Shin, Esq., and Brendan R. Marx, Esq.

2 Attached hereto as Exhibit 2 is a true and correct copy of the Affidavit of Dr. Percy Erachshaw dated March 25, 2013 submitted to the EEOC ("Erachshaw EEOC Affidavit dated 3/25/13").

3 Attached hereto as Exhibit 3 is a true and correct copy of the Affirmation of David N. Hoffman dated March 3, 2017 (“Hoffman Affidavit dated 3/3/17”).

4 Attached hereto as Exhibit 4 is a true and correct copy of the Affidavit of Dr. Addagada C. Rao dated March 30, 2013 submitted to the EEOC (“Rao EEOC Affidavit dated 3/30/13”).

5 Attached hereto as Exhibit 5 are true and correct copies of the Affidavit of Dr. Addagada C. Rao in Opposition to Defendants’ Motion for Summary Judgment dated March 10, 2017, with the employment contract compensation pages for seven other surgeons attached (“Rao Affidavit in Opp dated 3/10/17”).

6 Attached hereto as Exhibit 6 are true and correct copies of the Affidavit of Dr. John C. Riggs dated February 27, 2017, with an earlier Affidavit of Dr. John C. Riggs dated March 28, 2013 submitted to the EEOC annexed, with email letter dated January 13, 2012 from Ramon Rodriguez to Dr. John C. Riggs attached (“Riggs Affidavit dated 2/27/17”).

7 Attached hereto as Exhibit 7 is a true and correct copy of the Declaration of Ramon Rodriguez dated January 11, 2013 submitted to the EEOC (“Rodriguez EEOC Declaration dated 1/11/13”).

8 Attached hereto as Exhibit 8 is a true and correct copy of the Declaration of Mounzer Tchelebi, M.D. dated January 11, 2013 submitted to the EEOC (“Tchelebi EEOC Declaration dated 1/11/13”).

9 Attached hereto as Exhibit 9 is a true and correct copy of extracts from the transcript of the deposition testimony of Frank T. Chiarello dated October 19, 2016 (“Chiarello EBT dated 10/19/16”).

10 Attached hereto as Exhibit 10 is a true and correct copy of extracts from the transcript of the deposition testimony of Dr. Percy Erachshaw dated January 22, 2016 (“Erachshaw EBT dated 1/22/16”).

11 Attached hereto as Exhibit 11 is a true and correct copy of extracts from the transcript of the deposition testimony of Gary Goffner dated February 29, 2016 (“Goffner EBT dated 1/22/16”).

12 Attached hereto as Exhibit 12 is a true and correct copy of extracts from the transcript of the deposition testimony of Jacqueline Harootian-Abdelaziz dated January 5, 2017 (“Harootian EBT dated 1/5/17”).

13 Attached hereto as Exhibit 13 are true and correct copies of extracts from the transcript of the deposition testimony of Frank Lepore, DPM dated March 28, 2016 (“Lepore EBT dated 3/28/16”) in Riggs v Wyckoff Heights Medical Center, Inc., Ramon Rodriguez, and Gary Goffner, Sup. Ct. Kings Cty. Index No. 9229-2013, with Franklin, Gringer & Cohen, P.C. letter dated May 20, 2016 to Susan L. Shin, Esq. and Brendan R. Marx, Esq.

14 Attached hereto as Exhibit 14 is a true and correct copy of the plaintiff’s witness errata sheet dated April 24, 2015 for the deposition of Addagada C. Rao, M.D. dated March 13, 2015.

15 Attached hereto as Exhibit 15 is a true and correct copy of the plaintiff’s witness errata sheet dated June 24, 2016 for the deposition of Addagada C. Rao, M.D. dated February 12, 2016.

16 Attached hereto as Exhibit 16 is a true and correct copy of extracts from the transcript of the deposition testimony of Dr. John C. Riggs dated January 29, 2016 (“Riggs EBT dated 1/29/16”).

17 Attached hereto is Exhibit 17 is a true and correct copy of extracts from the transcript of the deposition testimony of Ramon Rodriguez dated July 19, 2016, August 18, 2016, and September 19, 2016 (“Rodriguez EBT dated 7/19—9/19/16”).

18 Attached hereto as Exhibit 18 is a true and correct copy of extracts from the transcript of the deposition testimony of Bibiana Soto dated January 21, 2016 (“Soto EBT dated 1/21/16”).

19 Attached hereto as Exhibit 19 is a true and correct copy of extracts from the transcript of the deposition testimony of Dr. Mounzer Tchelebi dated May 20, 2016 (“Tchelebi EBT dated 5/20/16”).

20 Attached hereto as Exhibit 20 is a true and correct copy of extracts from the transcript of the deposition testimony of Dr. John Vernaleo dated October 24, 2016 (“Vernaleo EBT dated 10/24/16”).

21 Attached hereto as Exhibit 21 is a true and correct copies of the United States Passport of Addagada C. Rao issued on November 8, 2007 (“Rao Passport dated 11/8/07”).

22 Attached hereto as Exhibit 22 are true and correct copy of a Memorandum and Announcement dated July 25, 1988 from Andrew R. Razzore to Distribution A, B, C, D, with Wyckoff Heights Hospital Payroll Authorization dated July 29, 1988 for Addagada Rao as Chairman/Director of Surgery.

23 Attached hereto as Exhibit 23 are true and correct copies of a Wyckoff Heights Medical Center Payroll Authorization dated January 29, 2009 for A. C. Rao as Chairman of Surgery, with related Audit Report p. 3 entry of January 29, 2009.

24 Attached hereto as Exhibit 24 is a true and correct copy of the Wyckoff Heights Medical Center Form 990 for 2013, Part VII.

25 Attached hereto as Exhibit 25 are true and correct copies of Arnold & Porter LLP letters dated August 4, 2016 and August 31, 2016 from Maggie Maurone, Esq. to Ken Sutak, Esq., and of Franklin, Gringer & Coeh, P.C. letters dated August 26, 2016 and September 9, 2016 from Ken Sutak, Esq. to Maggie Maurone, Esq.

26 Attached hereto as Exhibit 26 are true and correct copies of the Wyckoff Heights Medical Center Performance Review and Competency Assessment forms for Dr. A. C. Rao dated December 2007, December 2006, December 2005, December 2004, and December 2003.

27 Attached hereto as Exhibit 27 is a true and correct copy of a Wyckoff Heights Medical Center appointment log for Dr. Rao, Chairman Dept. of Surgery at Ramon Rodriguez' Office on December 29, 2011.

28 Attached hereto as Exhibit 28 is a true and correct copy of an email letter dated January 1, 2012 from Ramon Rodriguez to Lora Levebvre.

29 Attached hereto as Exhibit 29 is a true and correct copy of the certified Neustar Verizon Wireless customer records for Mounzer Tchelebi: 201-232-4889 for the period December 30, 2011 to January 4, 2012, with Declaration of Custodian of Records dated September 29, 2014.

30 Attached hereto as Exhibit 30 are true and correct copies of Plaintiff's Eighth Request to Produce Documents, etc. dated June 3, 2016, and Arnold & Porter LLP letter dated August 4, 2016 from Maggie Maurone, Esq. to Ken Sutak, Esq., with 3 pages of biometric "Timesheet" records of Addagada Rao for the period December 1, 2011 to December 31, 2011, and 4 pages of biometric "Timesheet" records of Mounzer Tchelebi for the period December 1, 2011 to December 30, 2011.

31 Attached hereto as Exhibit 31 is a true and correct copy of the certified Port Authority of NY & NJ E-Z Pass New York Service Center records for Mounzer Tchelebi Private Account # 5593932 showing E-Z Pass NY Toll/EPS/Financial History Activity from 12/30/11 to 1/2/12, with Certification by the E-Z Pass Subpoena Administrator of The Port Authority of NY & NJ dated September 13, 2016.

32 Attached hereto as Exhibit 32 is a true and correct copy of the Wyckoff Heights Medical Center Form 990 for 2014, Part IV.

33 Attached hereto as Exhibit 33 is a true and correct copy of "An Open Letter to the Board of Trustees" dated January 4, 2012 from Addagada C. Rao to "Chairman/Member, Board of Trustees."

34 Attached hereto as Exhibit 34 is a true and correct copy of an email circular dated January 8, 2012 from Jacqueline Harootian to various recipients not including Addagada Rao.

35 Attached hereto as Exhibit 35 is a true and correct copy of an email "Reminder" dated January 6, 2012 from Stacy A. Williams to various recipients including Addagada Rao.

36 Attached hereto as Exhibit 36 is a true and correct copy of "An Open Letter to the Board of Trustees" dated January 9, 2012 from Addagada C. Rao to "Chairman/Member, Board of Trustees."

37 Attached hereto as Exhibit 37 is a true and correct copy of Ramon Rodriguez' Responses and Objections to Plaintiff's First Set of Interrogatories, dated August 1, 2014.

38 Attached hereto as Exhibit 38 is a true and correct copy of extracts from the testimony of Matthew Cheung before the Review Hearing Committee In the Matter of Percy Erachshaw, D.O. dated March 13, 2012.

39 Attached hereto as Exhibit 39 are true and correct copies of emails dated January 15, 2012 sent between Ramon Rodriguez and Akella Chendrasekhar.

40 Attached hereto as Exhibit 40 are true and correct copies of extracts from Plaintiff's First Request to Produce Documents, etc. dated July 2, 2014, with related extracts from Wyckoff Heights Medical Center's Responses and Objections to Plaintiff's First Request for Production of Documents, etc. dated July 31, 2014, and Arnold & Porter LLP letter dated August 23, 2016 from Maggie Maurone, Esq. to Ken Sutak, Esq., with documents Bates-stamped WYCKOFF-RF-00001439 TO WYCKOFF-RF-00001472 containing emails of the chief surgical residents, Drs. Baltazar, Betler, and Cheung, for the period January 13, 2012 to January 20, 2012.

41 Attached hereto as Exhibit 41 are true and correct copies of Plaintiff's Fifth Request to Produce Documents, etc. dated September 30, 2015, with Arnold & Porter LLP letter dated December 2, 2015 from Susan L. Shin, Esq. to Ken Sutak, Esq.

42 Attached hereto as Exhibit 42 are true and correct copies of the Wyckoff Heights Medical Center Physician Terms Sheet dated June 25, 2009 for Marinel Ardeljan, and the Wyckoff Heights Physician Terms Sheet dated August 18, 2010 for Ramon Cabanas.

43 Attached hereto as Exhibit 43 are true and correct copies of the Wyckoff Heights Medical Center Physician Terms Sheet dated August 31, 2010 for Percy Erachshaw (front page only), with Franklin, Gringer & Cohen, P.C. letter dated December 20, 2016 from Ken Sutak, Esq. to Susan L. Shin, Esq., Maggie Maurone, Esq., and Brendan R. Marx, Esq.

44 Attached hereto as Exhibit 44 is a true and correct copy of an undated anonymous letter from "Active and Working Medical Staff Society Members" to the "Wyckoff Board of Trustees Attn. Emil Rucigay ESQ."

45 Attached hereto as Exhibit 45 are true and correct copies of an email letter dated January 27, 2012 from A. C. Rao to Frank Chiarello, an email letter dated January 29, 2012 from Frank Chiarello to "Dear Board Members," and an email letter dated January 29, 2012 from Ramon Rodriguez to "Dear Board Members."

46 Attached hereto as Exhibit 46 are true and correct copies of an email letter dated April 23, 2012 from Jennifer Kirschenbaum, Esq. to recipients each addressed as "Dear Board of Trustee Member," with undated letter from "John C. Riggs, M.D., President of Medical Staff Board; Chairman of OBGYN" to the "Wyckoff Heights Medical Center Board of Trustees and Medical Staff."

47 Attached hereto as Exhibit 47 are true and correct copies of Plaintiff's Tenth Request to Produce Documents, etc. dated July 20, 2016, and Plaintiff's Twelfth Request

to Produce Documents, etc. dated July 28, 2016, and Plaintiff's Second Request to Admit dated July 28, 2016.

48 Attached hereto as Exhibit 48 is a true and correct copy of extracts from the Wyckoff Heights Medical Center Employee Handbook, with Employee Acknowledgement of receipt dated July 30, 2010, which was produced in response to Plaintiff's Tenth Request to Produce Documents, etc. dated July 20, 2016, and Plaintiff's Twelfth Request to Produce Documents, etc. dated July 28, 2016, and Plaintiff's Second Request to Admit dated July 28, 2016.

49 Attached hereto as Exhibit 49 is a true and correct copy of extracts from the Wyckoff Heights Medical Center Administrative Policy and Procedural Manual, with review date(s) of March 1, 2010 and January 27, 2016, which was produced in response to Plaintiff's Tenth Request to Produce Documents, etc. dated July 20, 2016, and Plaintiff's Twelfth Request to Produce Documents, etc. dated July 28, 2016, and Plaintiff's Second Request to Admit dated July 28, 2016.

50 Attached hereto as Exhibit 50 is a true and correct copy of extracts from the undated Wyckoff Heights Medical Center Code of Conduct, with Introduction by President and CEO Rajiv Garg, which was produced in response to Plaintiff's Tenth Request to Produce Documents, etc. dated July 20, 2016, and Plaintiff's Twelfth Request to Produce Documents, etc. dated July 28, 2016, and Plaintiff's Second Request to Admit dated July 28, 2016.

51 Attached hereto as Exhibit 51 is a true and correct copy of extracts from the undated Wyckoff Heights Medical Center Code of Conduct, with Introduction by President and CEO Ramon Rodriguez.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Dated: New York, New York

March 8, 2017



Kenneth Sutak